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### **Analysis of Enrolled House Bill 5934**

**Topic:** Fraudulent Financing Statement Directed Against Public Officials  
**Sponsor:** Representative Andy Colouris  
**Co-Sponsors:** Representatives Bieda, Griffin, and Horn  
**Committee:** House Banking and Financial Services  
Senate Banking and Financial Institutions

**Date Introduced:** April 8, 2008

**Date Enrolled:** December 18, 2008

**Date of Analysis:** December 12, 2008

**Position:** The Department of Labor & Economic Growth supports the bill.

**Problem/Background:** Public officials such as judges, policemen, DNR officers, and DEQ officers may occasionally encounter disgruntled individuals who attempt to "get back" at them in some way. Individuals have been known to file fraudulent financing statements against those officers in an attempt to harass them or cause them financial harm. Recent incidents initiated the introduction of this legislation, which piggybacks similar legislation that became effective in 2005. That legislation did not go far enough, as an aggrieved person would have to file suit, and get a judgment against a person who filed a fraudulent claim. This is an expensive and lengthy process. Testimony during the committee meetings on this bill involved a case in the Third Circuit Court of an egregious example of a UCC statement filed against a judge by a prison inmate, which was clearly false. The judge was required to go to court to terminate the statement, but by that time, he could have suffered permanent harm because these statements can affect an individual's credit rating, and even once the statement is terminated, there is no way to tell if the information will still affect a person's financial well-being. The prisoner had no assets or means of providing any type of restitution, so the costs were all carried by the victim.

Further research reveals that this is a growing national problem, even being perpetrated against banks and other financial companies, as well as federal officials. The best way to fight this has been to allow some type of expedited process to terminate these financial statements.

**Description of Bill:** This bill would do the following:

- Amend article 9 of the Uniform Commercial Code by adding section 9501A.

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- Allow a person notified by the Secretary of State that they have been identified as the debtor to file an affidavit that a financing statement is fraudulent, and requires the Secretary of State to terminate the statement.
- Provide for the filer of the false financing statement to pay costs and expenses for the person identified as the debtor in the action.
- Outline a procedure for the filer, if the statement was filed in good faith, and provides criminal penalties for filing a false affidavit.
- Exempt statements filed by regulated financial institutions or representatives of regulated financial institutions, but allow the filing office to request proof of licensure or regulation.

The bill is tie-barred to Senate Bill 1236 and House Bill 5935.

### **Summary of Arguments**

**Pro:** By providing a quicker method for terminating a false statement, the types of cases discussed during testimony can be resolved more quickly and less expensively by the victims, especially when the person who files the fraudulent statement has no means to provide restitution.

**Con:** If the identified debtor claims that a statement is fraudulent, the statement is terminated until the filer can obtain a judgment to reinstate the statement. During this time, a purchaser of the collateral may give reasonable reliance that there is no statement on file to the detriment of the filer.

The legislation assures that the statement would not be retroactive under this circumstance.

### **Fiscal/Economic Impact**

**(a) Department** The bill would have no budgetary or revenue impact on the Department of Labor & Economic Growth.

**(b) State** Little overall effect is expected. There would be an indeterminate cost to the Department of Corrections for any incarcerations resulting from false filings of affidavits, but it should be minimal. Costs to the Department of State are expected to be minimal. There could be a cost savings to the Judiciary and other state departments, such as the State Police, Corrections, Department of Natural Resources, and the Department of Environmental Quality by allowing an abbreviated process to terminate fraudulent filings against employees performing their official duties. There would be no increased revenue to the Department of State for the filing of affidavits.

**(c) Local Government** Local governments would bear most of the cost of incarcerating anyone convicted of filing a false affidavit, but there is no data to estimate how many persons may be prosecuted or convicted. Local government officials and employees would benefit from the protection provided by this bill from fraudulent financing statements.

**Other State Departments:** The Departments of Natural Resources, State, and State Police have an interest in this bill.

**Administrative Rules Impact:**  
act for filing office procedures.

The Secretary of State has rulemaking authority under the